

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7469 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ROLWIN ENGINEERING CO

Versus

UNION OF INDIA

Appearance:

MR MK VAKHARIA for Petitioner
MR JAYANT PATEL for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA
Date of Order: 08/09/98

ORAL JUDGMENT

#. Rule. Mr.Jayant Patel, learned counsel appears and waives service of rule on behalf of respondents. In the facts and circumstances of the case, the petition is taken for final hearing today.

#. This petition is filed against an inteim order passed by the Customs and Excise and Gold (Control) Appellate Tribunal ("CEGAT" for short) dated 15th July,1998. It is admitted that being aggrieved by an order passed by the Commissioner of Customs and Central Excise, Rajkot, an appeal is filed which is pending before CEGAT, Mumbai. Along with a memorandum of appeal, an application for stay was also submitted. The tribunal has admitted the appeal and it awaits final hearing. So far as, application for stay is concerned, the tribunal granted conditional stay in Para-4, which reads;

"We have carefully considered the submissions.

We find that there has been illicit removal of excisable goods. Hence, the case has to be gone in detail, which cannot be done at the stage of stay petition. Therefore, having regard to the financial condition of the applicants as stated before us, we direct the applicants to deposit a sum of Rs.10 lakhs (Rupees Ten Lakhs) for hearing the case on merits, on or before 15-09-1998, subject to which predeposit of the balance amount of duty as well as penalty on the applicants is dispensed with and recovery is stayed." (Emphasis supplied)

#. Mr. K.G.Vakharia, Senior Counsel appearing for Mr.Mehul Vakharia, learned counsel for petitioner submitted that on merits, petitioner has a good case and order passed by the Commissioner of Central Customs and Central Excise, Rajkot is illegal and contrary to law. In our opinion, at this stage, no opinion need be expressd on that aspect, when the appeal is pending.

#. Mr.Vakharia then contended that in the facts and cirucmstances of the case, the order directing petitioner to deposit an amount of Rs.10 lacs is very harsh. In our opinion, it is also discretionary power of the Tribunal and when conditional order is passed, it cannot be said that the order requires interference by this Court.

#. Finally, it was urged that the petitioner firm was in bad financial condition and as also stated at the bar that petitioner firm is now totally closed. In Para-4 of the order, the Tribunal has also observed while directing the petitioner to deposit an amount of Rs.10 lacs, that having regard to the financial condition of the applicant, the order was made. The tribunal has directed the petitioner to deposit the sum of Rs.10 lacs on or before 15th September,1998.

#. Having heard the learned counsel for petitioner, as also Mr. Jayant Patel, for the respondents, in our opinion, ends of the justice would be met, if following directions are issued.

The petitioner firm will deposit an amount of Rs.10 lacs as per the order passed by the CEGAT on 15th July, 1998. So far as the deposit is concerned, it will be made on the following terms;

- (1) Rs.3 lacs (Rs. Three lacs only) to be deposited on or before 15th October, 1998;
- (2) Rs.3 lacs (Rs. Three lacs only) to be deposited on or before 15th November, 1998; and
- (3) Rs.4 lacs (Rs. Four lacs only) to be deposited on or before 31st December, 1998.

If there is default at any occasion, the order passed by us, would cease to operate.

#. The Tribunal will take up final hearing of an appeal as per its board but after the entire amount of Rs.10 lacs would be deposited.

#. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, no order as to costs. Direct Service is permitted.

(C.K.Thakkar, J.)

Date : 8-9-1998 (A.M.Kapadia, J.)

(KPP)

-----ROLWIN
ENGINEERING CO Versus

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